



11

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: Miami

Date: OCT 22 2002

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Naturalization under Section 322 of the
Immigration and Nationality Act, 8 U.S.C. 1433

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant was born on February 23, 1996, in Guatemala. The applicant's father, [REDACTED] was born in Guatemala in 1968 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in the United States in November 1966. The applicant's parents married each other on March 11, 1994. The applicant seeks to become a naturalized citizen under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433, based on the physical presence of his U.S. citizen grandparent.

The acting district director reviewed the record and concluded that the applicant had failed to establish that the U.S. citizen grandparent had been physically present in the United States for the required amount of time and denied the application accordingly.

On appeal, the applicant submits additional evidence to show that his U.S. citizen grandparent studied at Saint Clara Academy for 18 months after the age of 14 years, she studied for 32 months at Trinity College, and was employed at Harvard University for 12 months from September 1962 to September 1963. This adds up to 62 months. The applicant's grandparent spent additional time in Boston giving birth to three children, in October 1963, in February 1965 and in November 1966.

Section 322 of the Act was amended by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1631 (CCA), effective February 27, 2001, and provides benefits only to those persons who had not yet reached their 18th birthday. The applicant was 5 years old on February 27, 2001.

Section 322 of the Act provides that:

(a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue such a certificate of citizenship to such parent upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent-

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five

years, at least two of which were after attaining the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal custody and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The record reflects that the applicant's citizen grandparent has satisfied the physical presence requirements.

The present Act requires that the child be in the United States pursuant to a lawful admission, and be maintaining such lawful status. The record reflects that the applicant was admitted to the United States as a nonimmigrant visitor when the interview was conducted on August 7, 2001. The applicant has satisfied the requirement of section 322(a)(4) of the Act. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained. The acting district director's decision is withdrawn, and the application is approved.